

1 **MICHAEL DOCKTERMAN** (*pro hac vice* application to be filed)
2 **HEATHER H. HARRISON** (*pro hac vice* application to be filed)
3 **EDWARDS WILDMAN PALMER LLP**
225 West Wacker Drive, Suite 2800
Chicago, IL 60606
Telephone: (312) 201-2000
4 Facsimile: (312) 201-2155
Email: mdockterman@edwardswildman.com
5 Email: hharrison@edwardswildman.com

6 **CLINTON J. McCORD (SBN 204749)**
7 **EDWARDS WILDMAN PALMER LLP**
9665 Wilshire Boulevard, Suite 200
8 Beverly Hills, California 90212
Telephone: (310) 860-8700
9 Fax No.: (310) 860-3800
Email: cmccord@edwardswildman.com

10 Attorneys for Plaintiff
11 **UTHE TECHNOLOGY CORPORATION**

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16 **UTHE TECHNOLOGY**
17 **CORPORATION,**

18 Plaintiff,

19 vs.

20 **HARRY ALLEN and AETRIUM, INC.,**

21 Defendants.

CASE No. 3:95-cv-02377-MHP

22 **MOTION TO REOPEN**
23 **ADMINISTRATIVELY CLOSED**
24 **CASE AND LIFT STAY**

25 Date: June 18, 2012
26 Time: 2:00 p.m.
27 Place: San Francisco Courthouse
28 Courtroom 15, 18th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

1 Plaintiff Uthe Technology Corporation, by and through its attorneys, hereby
2 submits this Motion to Reopen Administratively Closed Case and Lift Stay and states
3 as follows:

4 1. This case was stayed on December 8, 1993, pending arbitration
5 proceedings in Singapore, and administratively closed on October 27, 1997. An award
6 has now been issued in the Singapore arbitration proceedings, justifying the lifting of
7 the stay.

8 2. This case was initially filed in Santa Clara County Superior Court by
9 Uthe Technology Corporation ("Uthe") against defendants Peter Kwan; Y.K. Chow;
10 Francis Chau; Katherine Yip; Harry Allen; and Aetrium, Inc., and removed to this
11 Court by the Defendants on August 20, 1993.

12 3. On September 23, 1993, the defendants Peter Kwan and Francis Chua
13 moved to dismiss on the grounds of *forum non conveniens*, or in the alternative, stay
14 pending the completion of arbitration proceedings in Singapore pursuant to an
15 arbitration clause.

16 4. Also on September 23, 1993, the defendants Harry Allen and Aetrium,
17 Inc., moved to stay proceedings pending arbitration between Uthe and defendants
18 Kwan, Chua, and Chow.

19 5. Uthe opposed the motion to dismiss and the motions to stay proceedings.

20 6. On December 8, 1993, Judge James Ware issued an order granting the
21 motion to dismiss on *forum non conveniens* grounds with respect to defendants Kwan
22 and Chua and granting the motion to stay proceedings pending arbitration with respect
23 to defendants Allen and Aetrium, Inc. Judge Ware granted the stay on the grounds
24 that "the arbitration may narrow or limit the issues raised by the claims alleged against
25 Aetrium and Allen." (See Dec. 8, 1993 Order Granting Motion to Dismiss and Motion
26 to Stay attached as Exhibit A.)

27 7. On February 18, 1994, Judge Ware denied Uthe's subsequent motions for
28 leave to file a second amended complaint and motion for reconsideration.

1 8. Uthe filed its notice of appeal on March 14, 1994. The appeal was
2 dismissed on May 17, 1994.

3 9. The parties Uthe (“the Arbitration Claimant”) and defendants Kwan,
4 Chua, and Chow (“the Arbitration Respondents”) entered into arbitration on August
5 29, 1994, in front of Reggie Thein as Arbitrator.

6 10. The parties filed status conference statements in this action until the case
7 was administratively closed on October 27, 1997. On that date, Judge Marilyn H.
8 Patel ordered that the action remain stayed pursuant to the Dec. 8, 1993 order pending
9 resolution of the arbitration in Singapore of the underlying dispute between plaintiff
10 and former defendants Peter Kwan and Francis Chua. Judge Patel also ordered the
11 case dismissed for statistical purposes. (See October 27, 1997 Order attached as
12 Exhibit B.)

13 11. On October 10, 1998, Uthe instituted proceedings against the defendants
14 Kwan, Chua, and Chow in the High Court of Singapore. On February 22, 1999, the
15 High Court of Singapore ordered that the suit be stayed and referred to the arbitration.
16 The High Court also ordered that the 1994 arbitration in front of Reggie Thein be
17 terminated and replaced by an arbitration in front of K. S. Rajah as Arbitrator, which
18 was deemed to have commenced on October 10, 1998.

19 12. The arbitration was bifurcated, and the Arbitrator issued a Partial Award
20 making a finding of liability in favor of Uthe on June 30, 2005. However, the
21 arbitration proceedings and Partial Award were confidential under the laws of
22 Singapore.

23 13. The Arbitration Respondents then brought a law suit on August 19, 2005,
24 in the High Court of Singapore alleging that the Partial Award should be set aside on
25 grounds of bias. The High Court dismissed this suit in favor of Uthe on December 9,
26 2005.

27 14. Before the damages portion of the proceedings were complete, the
28 Arbitration Respondents commenced a new suit on October 20, 2006, in the High

1 Court of Singapore applying to have the court declare the arbitration terminated on the
2 grounds that Uthe had breached confidentiality. The High Court dismissed this suit in
3 favor of Uthe on June 15, 2009.

4 15. The Arbitration Respondents appealed the dismissal on July 6, 2009, and
5 the Singapore Court of Appeal affirmed the dismissal. The Arbitrator had refused to
6 continue with the damages proceedings until the Singapore Court of Appeal's
7 judgment made the dismissal final.

8 16. On January 7, 2010, K.S. Rajah resigned as Arbitrator due to poor health.
9 By consent order of court filed in the Singapore Supreme Court, Alan J. Thambiayah
10 was appointed as Arbitrator in place of K.S. Rajah.

11 17. On March 23, 2012, the Arbitrator issued his Partial Award 2, which
12 contained an award of damages against the Arbitration Respondents. With the
13 issuance of the Partial Award 2, the arbitration proceedings are nearly complete. Only
14 an inquiry into the allocation of costs, charges, and expenses of the arbitration remains
15 before the arbitration proceeding is entirely complete.

16 18. With the liability and damages portions of the arbitration proceedings
17 complete, this Court is now equipped to determine any impact on the issues raised by
18 the claims against defendants Allen and Aetrium, Inc the arbitration proceedings may
19 have had. Thus, the case should be reopened and the stay should be lifted.

20 WHEREFORE, Plaintiff Uthe Technology, Inc. respectfully requests that this
21 Court reopen Case No. C 93-20614, which had been closed for statistical purposes,
22 and lift the stay that was imposed pending arbitration proceedings, and for any other
23 relief just and necessary under the circumstances.

24 Dated: May 18, 2012

Respectfully submitted,

26 By: /s/ Clinton J. McCord

27 Clinton J. McCord

28 Attorney for Plaintiff

EXHIBIT A

RECEIVED
ROPER, MAJESKI
RCO

DEC 13 1993

CALENDARED _____
FILE _____

DEC 8 12 52 PM '93

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

*File
Uthe v.
Kwan JBF*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UTHE TECHNOLOGY CORPORATION,

Plaintiff,

vs.

PETER KWAN; Y.K. CHOW; FRANCIS
CHAU; KATHERINE YIP; HARRY ALLEN;
AETRIUM, INC.,

Defendants.

NO. C 93-20614 JW

ORDER GRANTING MOTION
TO DISMISS AND MOTION
TO STAY

Defendants Peter Kwan and Francis Chau move this Court for an order dismissing this action on the ground of forum non conveniens or in the alternative for an order staying this action pending arbitration. Defendants Harry Allen and Aetrium Inc., ("Aetrium") move for an order staying this action pending arbitration. For the reasons set forth below, Defendants Kwan and Chau's motion to dismiss is GRANTED, and Defendants Aetrium and Allen's motion to stay this action is GRANTED.

BACKGROUND

This action arises out of the sale of Plaintiff Uthe

1 Technology Corporation's ("UTHE") wholly owned subsidiary to
2 Defendants Kwan and Chau in October 1992. UTHE manufactures and
3 distributes computer products. The subsidiary, UTSPL/UST
4 Singapore ("UTSPL") distributes computer products supplied by
5 UTHE and other U.S. manufacturers to customers in Asia and has
6 its principal place of business in Singapore. Kwan and Chau are
7 former employees of UPTSL.

8 Plaintiff alleges that Kwan and Chau, while employed at
9 USPTL, set up a secret company in mid-1992 to poach UPTSL
10 customers by diverting orders intended for UPTSL to the secret
11 corporation. Kwan and Chau allegedly conspired with one of
12 UPTSL's largest U.S. suppliers, Aetrium, and with an Aetrium
13 officer, Harry Allen, to divert Aetrium products from UPTSL to
14 the secret corporation. As a result of Defendants' actions,
15 Plaintiff claims it was forced to sell all of its UPTSL shares to
16 Kwan and Chau at distressed prices.

17 The agreement for the sale of the UPTSL stock was negotiated
18 in Singapore and contains a choice of law provision specifying
19 the application of Singapore law. The agreement also contains a
20 provision mandating binding arbitration with respect to any
21 dispute arising out of, in connection with, or in any way related
22 to the agreement. Plaintiff's complaint avers federal securities
23 fraud claims, a RICO claim, and certain state law fraud claims.

24
25 DISCUSSION
26

1 1. Forum Non Conveniens

2 The doctrine of forum nonconveniens allows an American
3 court to decline jurisdiction when a foreign court can more
4 appropriately conduct the litigation. Piper Aircraft v. Reyno,
5 454 U.S. 235, 250 (1981). Dismissal on forum non conveniens
6 grounds requires: (1) the existence of an adequate alternative
7 forum; and (2) that the balance of private and public interest
8 factors favors dismissal. Contact Lumber Co. v. Evangelical
9 Alliance Mission, 918 F.2d 1446, 1449 (9th Cir. 1990). Although
10 there is generally a strong presumption in maintaining an
11 American plaintiff's choice of forum, the presence of an American
12 plaintiff is not itself sufficient to bar dismissal on the ground
13 of forum non conveniens. Lockman Found. v. Evangelical Alliance
14 Mission, 930 F.2d 764, 767 (9th Cir. 1991). If the balance of
15 conveniences suggests that trial in the chosen forum would be
16 unnecessarily burdensome for the defendant or the court,
17 dismissal is proper. Piper Aircraft, 454 U.S. at 256 n. 23.

18 The requirement of the existence of an adequate alternative
19 forum is ordinarily satisfied when the defendant is amenable to
20 process in another jurisdiction. Piper Aircraft, 454 U.S. at 265
21 n. 22. However, the other forum will not be considered adequate
22 unless it provides a satisfactory remedy. The alternative forum
23 need not offer all of the remedies available in an American court
24 as long as the remedies offered in the foreign forum will
25 adequately redress plaintiff's injuries. Lockman, 930 F.2d at

1 more appropriate forum to the extent this case involves
2 Defendant's Kwan and Chau. Plaintiff's argument that dismissal
3 here is precluded by the existence of federal securities fraud
4 claims is unavailing. Plaintiff's federal securities claims are
5 trumped by the choice of law provision specifying the application
6 of Singapore law. Roby v. Corporation of Lloyd's, 996 F.2d 1353,
7 1362 (2nd Cir. 1993). It defies reason to suggest that a
8 plaintiff may circumvent a choice of law provision merely by
9 alleging claims not recognized by the chosen body of law. That
10 result would eviscerate such provisions. Id. at 1360.

11 ~~Because this action is dismissed on the ground of forum non~~
12 ~~conveniens as it relates to Defendants Kwan and Chau, this Court~~
13 ~~need not reach Kwan and Chau's motion to stay pending~~
14 ~~arbitration.~~

15 2. Aetrium and Allen's Motion to Stay.

16 Although Aetrium and Allen were not parties to the stock
17 sale agreement containing the arbitration clause, these
18 Defendants ask this Court to exercise its discretion to stay this
19 action pending the completion of arbitration in Singapore. Given
20 that the arbitration may narrow or limit the issues raised by the
21 claims alleged against Aetrium and Allen, there is a sufficient
22 basis for this Court to exercise its inherent power "to grant the
23 stay in order to control its docket, conserve judicial resources,
24 and provide for a just determination of the cases pending before
25 it." Contracting Northwest v. City of Fredericksburg, 713 F.2d

1 382, 387 (8th Cir. 1983). Accordingly, Defendants' motion to
2 stay is GRANTED.

3
4
5 CONCLUSION

6 1. Defendants Kwan and Chau's Motion to Dismiss on the ground of
7 forum nonconveniens is GRANTED on the condition that the amount
8 of the bond required to be posted in Sinagore is reasonable. If
9 the bond requirement is excessive, Plaintiff may seek appropriate
relief in this Court.

11 2. Defendants Aetrium and Allen's Motion to Stay is GRANTED.

12 3. A case management conference is scheduled for January 21, 1994 *cdl*
13 at 10:30 a.m. *PK*

14 4. Defendants' request for attorney's fees is Denied.

15 IT IS SO ORDERED.

16 DATE: *December 8, 1993*

17
18 *James Ware*
19 HONORABLE JAMES WARE
20 United States District Judge
21
22
23
24
25
26

jwa

1 CASE NAME: UTHE TECHNOLOGY V. KWAN, ET AL.
 2 ACTION NO.: C 93 20614 JW (PVT) ENE

3 PROOF OF SERVICE

4 STATE OF CALIFORNIA, COUNTY OF SAN MATEO:

5 I am a citizen of the United States. My business address is
 6 1001 Marshall Street, Redwood City, California. I am employed in
 7 the County of San Mateo where this mailing occurs. I am over the
 8 age of 18 years, and not a party to the within cause. I am
 9 readily familiar with my employer's normal business practice for
 10 collection and processing of correspondence for mailing with the
 11 U.S. Postal Service, and that practice is that correspondence is
 12 deposited with the U.S. Postal Service the same day as the day of
 13 collection in the ordinary course of business.

14 On the date set forth below, following ordinary business
 15 practice, I served the foregoing document(s) described as:

16 CIVIL APPEALS DOCKETING STATEMENT

17 on said date at my place of business, a true copy thereof enclosed
 18 in a sealed envelope prepaid for first-class mail for collection
 19 and mailing that same day in the ordinary course of business,
 20 addressed to the parties as follows:

21 Charles S. Donovan, Esq.
 22 Walsh, Donovan, Lindh & Keech
 23 595 Market Street, Suite 2000
 24 San Francisco, CA 94105-2831
 25 (415) 957-8700

Craig A. Cook, Esq.
 Oppenheimer, Wolff & Donnelly
 Plaza VII
 45 South Seventh St. Suite
 3400
 Minneapolis, MN 55402
 (612) 344-9300

26 Karen L. Kennard
 27 McCutchen, Doyle, INGLETON & Andersen
 28 3 Embarcadero Center
 San Francisco, CA 94111
 (415) 393-200

[X] (BY MAIL) I caused such envelope(s) with postage thereon
 fully prepaid to be placed in the United States mail at
 Redwood City, California.

[X] (VIA FACSIMILE) I caused such documents to be transmitted by
 facsimile on this date to the offices of addressee(s).

[X] (FEDERAL) I declare that I am employed in the office of a
 member of the bar of this court at whose direction the service
 was made.

Executed on March 24, 1994, at Redwood City, California.


 Jeri Tovey

EXHIBIT B

CLOSED

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:95-cv-02377-MHP**

UTHE Technology Corp v. Allen, et al
Assigned to: Hon. Marilyn H. Patel
Referred to: Magistrate Judge Patricia V. Trumbull
Demand: \$0
Case in other court: SClara Superior Ct, 733225
94-15496
Cause: 18:1962 Racketeering (RICO) Act

Date Filed: 08/20/1993
Date Terminated: 10/27/1997
Jury Demand: Defendant
Nature of Suit: 470 Racketeer/Corrupt
Organization
Jurisdiction: Federal Question

Plaintiff**UTHE Technology Corporation**

represented by **Harold J. McElhinny**
Morrison & Foerster LLP
425 Market St
San Francisco, CA 94105-2482
(415) 268-7000
Email: HMcElhinny@mofo.com
TERMINATED: 10/31/1996
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Y. Chan
Robert Y. Chan Law Office
131 Steuart St 4th Flr
San Francisco, CA 94105
(415) 541-9100
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Walter C. Kohn
Ropers Majeski Kohn & Bentley
1001 Marshall St
Redwood City, CA 94063
650-364-8200
TERMINATED: 05/27/1994
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Peter Kwan**

represented by **Ann S. Crownover**
Walsh Donovan & Keech LLP
595 Market St

Ste 2000
San Francisco, CA 94105
(415)536-7800
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles S. Donovan
Walsh Donovan & Keech LLP
595 Market St
Ste 2000
San Francisco, CA 94105
(415)536-7800
Email: cdonovan@sheppardmullin.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Y. K. Chow

Defendant

Francis Chua

represented by **Ann S. Crownover**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles S. Donovan
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Katherine Yip

Defendant

Harry Allen

represented by **Karen Leanne Kennard**
McCutchen Doyle Brown Enersen LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
415-393-2626
Email: kkennard@mdbe.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Aetrium, Inc.

represented by **Karen Leanne Kennard**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/20/1993	1	NOTICE OF REMOVAL (no process) by defendant from Santa Clara County Superior Court, Case Number: 733225 ; Summons, Complaint, Fee status pd entered on 8/20/93 in the amount of \$ 120.00 (Receipt No. 103930) (ab, COURT STAFF) (Entered: 08/20/1993)
08/20/1993	2	ORDER RE COURT PROCEDURE and SCHEDULE by Judge James Ware : counsels' case management statement to be filed by 12/10/93 ; initial case management conference will be held 10:30 12/20/93 . (cc: all counsel) (ab, COURT STAFF) (Entered: 08/20/1993)
08/24/1993		RECEIVED stipulation extending time to plead submitted by defendant (ab, COURT STAFF) (Entered: 08/25/1993)
08/26/1993		RECEIVED proposed order extending time to plead submitted by defendants Harry Allen, and Aetrium, Inc. (ab, COURT STAFF) (Entered: 09/08/1993)
08/30/1993	3	STIPULATION extending time to plead to 9/13/93 (ab, COURT STAFF) (Entered: 09/08/1993)
08/30/1993	4	STIPULATION extending time to plead (ab, COURT STAFF) (Entered: 09/08/1993)
08/30/1993	5	CLERK'S NOTICE Initial Case Management Conference set for 10:30 1/21/94 (ab, COURT STAFF) (Entered: 09/08/1993)
08/30/1993	6	ORDER by Judge James Ware extending time to answer to 9/13/93 (Date Entered: 9/8/93) (cc: all counsel) (ab, COURT STAFF) (Entered: 09/08/1993)
09/03/1993	7	FIRST AMENDED COMPLAINT by plaintiff; jury demand (ab, COURT STAFF) (Entered: 09/10/1993)
09/10/1993	8	PROOF OF SERVICE by defendants Harry Allen, and Aetrium, Inc. of notice of continuance (ab, COURT STAFF) (Entered: 09/14/1993)
09/17/1993		SUMMONS issued as to defendant Katherine Yip (ab, COURT STAFF) (Entered: 09/21/1993)
09/17/1993		SUMMONS issued as to defendant Y. K. Chow (ab, COURT STAFF) (Entered: 09/21/1993)
09/23/1993	9	MOTION by defendants Harry Allen, and Aetrium, Inc. to stay proceedings pending arbitration with Notice set for 10/22/93 9 a.m. (ab, COURT STAFF) (Entered: 09/29/1993)
09/23/1993	10	MEMORANDUM by defendants Harry Allen, and Aetrium, Inc. in support of motion to stay proceedings pending arbitration [9-1] (ab, COURT STAFF) (Entered: 09/29/1993)
09/23/1993	11	DECLARATION by Craig Cook on behalf of defendants Harry Allen, and Aetrium, Inc. re motion to stay proceedings pending arbitration [9-1] (ab, COURT STAFF) (Entered: 09/29/1993)
09/23/1993		RECEIVED proposed order granting motion to stay submitted by defendants

		Harry Allen, and Aetrium, Inc. re: [9-1] (ab, COURT STAFF) (Entered: 09/29/1993)
09/23/1993	12	MOTION by defendants Peter Kwan, and Francis Chua to stay action pending arbitration , or, in alternative, to dismiss with Notice set for 10/22/93 9 a.m. (ab, COURT STAFF) (Entered: 09/30/1993)
09/23/1993	13	MEMORANDUM by defendants Peter Kwan, and Francis Chua in support of motion to stay action pending arbitration [12-1], of motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 09/30/1993)
09/23/1993	14	MEMORANDUM by defendants Peter Kwan, and Francis Chua in support of motion to stay action pending arbitration [12-1], of motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 09/30/1993)
09/23/1993	15	DECLARATION by Peter Kwan on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 09/30/1993)
09/23/1993	16	DECLARATION by Charles Donovan on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 09/30/1993)
09/23/1993	17	DECLARATION by Lim Joo Toon on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 09/30/1993)
09/23/1993	18	PROOF OF SERVICE by defendants Peter Kwan, and Francis Chua of documents No. 12-17 (ab, COURT STAFF) (Entered: 09/30/1993)
09/23/1993		RECEIVED proposed order re motion to dismiss submitted by defendants (ab, COURT STAFF) Modified on 11/24/1999 (Entered: 09/30/1993)
09/23/1993		RECEIVED proposed order re motion to stay submitted by defendants (ab, COURT STAFF) (Entered: 09/30/1993)
10/08/1993	19	OBJECTIONS by plaintiff to declaration of Peter Kwan [15-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	20	OBJECTIONS by plaintiff to declaration of Craig A. Cook [11-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	21	OBJECTIONS by plaintiff to declaration of Lim Joo Toon [17-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	22	MEMORANDUM by plaintiff in opposition to motion to stay proceedings pending arbitration [9-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	23	DECLARATION by J. Michael Goodson on behalf of plaintiff re opposition memorandum [22-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	24	DECLARATION by Goh Soon Hock on behalf of plaintiff re opposition memorandum [22-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	25	PROOF OF SERVICE by plaintiff of documents No. 22-24 (ab, COURT

		STAFF) (Entered: 10/13/1993)
10/08/1993		RECEIVED proposed order submitted by plaintiff re: [22-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	26	MEMORANDUM by plaintiff in opposition to motion to stay action pending arbitration [12-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	27	PROOF OF SERVICE by plaintiff of document no. 26 (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993		RECEIVED proposed order submitted by plaintiff re: [26-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993	28	MEMORANDUM by plaintiff in opposition to motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 10/13/1993)
10/08/1993		RECEIVED proposed order submitted by plaintiff re: [28-1] (ab, COURT STAFF) (Entered: 10/13/1993)
10/15/1993	29	REQUEST by defendant Peter Kwan, defendant Francis Chua for judicial notice (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	30	REPLY by defendant Peter Kwan, defendant Francis Chua re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	31	REPLY brief by defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1] (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	32	Second DECLARATION by Lim Joo Toon on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	33	Second DECLARATION by Peter Kwan on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1] (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	34	DECLARATION by Peter Kwan on behalf of defendant Peter Kwan, defendant Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	35	DECLARATION by Lim Joo Toon on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	36	PROOF OF SERVICE by defendants Peter Kwan, and Francis Chua of documents No. 29-35 (ab, COURT STAFF) (Entered: 10/20/1993)
10/15/1993	37	REPLY memo by defendants Harry Allen, and Aetrium, Inc. re motion to stay proceedings pending arbitration [9-1] (ab, COURT STAFF) (Entered: 10/20/1993)
10/21/1993	38	DECLARATION by J. Michael Goodson on behalf of plaintiff re opposition memorandum [28-1], re opposition memorandum [26-1] (ab, COURT STAFF) Modified on 10/25/1993 (Entered: 10/25/1993)

10/21/1993	39	DECLARATION by Goh Soon Hock on behalf of plaintiff re opposition memorandum [28-1], re opposition memorandum [26-1] (ab, COURT STAFF) (Entered: 10/25/1993)
10/22/1993	40	MINUTES: (C/R not reported) that the defendant's motion to stay action pending arbitration [12-1] is submitted without oral argument (ab, COURT STAFF) (Entered: 11/03/1993)
10/22/1993	41	ORIGINAL DECLARATION by Lim Joo Toon on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 11/03/1993)
10/22/1993	42	ORIGINAL SECOND DECLARATION by Lim Joo Toon on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 11/03/1993)
10/22/1993	43	ORIGINAL DECLARATION by Peter Kwan on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 11/03/1993)
10/22/1993	44	ORIGINAL SECOND DECLARATION by Peter Kwan on behalf of defendants Peter Kwan, and Francis Chua re motion to stay action pending arbitration [12-1], re motion to dismiss [12-2] (ab, COURT STAFF) (Entered: 11/03/1993)
10/22/1993	45	PROOF OF SERVICE by defendants Peter Kwan, and Francis Chua of documents No. 41-44 (ab, COURT STAFF) (Entered: 11/03/1993)
12/08/1993	46	ORDER by Judge James Ware granting motion to stay proceedings pending arbitration [9-1], granting motion to stay action pending arbitration [12-1], granting motion to dismiss [12-2] Case Management Conference set for 10:00 1/21/94; defendant's request for attorney fees is denied (Date Entered: 12/15/93) (cc: all counsel) [5:93-cv-20614] (ab, COURT STAFF) (Entered: 12/15/1993)
12/20/1993	47	MOTION by plaintiff for relief from order , or in alternative for reconsideration with Notice set for 1/29/94 9 a.m. [5:93-cv-20614] (ab, COURT STAFF) (Entered: 12/23/1993)
12/20/1993	48	MEMORANDUM by plaintiff in support of motion for relief from order [47-1], of motion for reconsideration [47-2] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 12/23/1993)
12/20/1993		RECEIVED proposed order granting motion to vacate submitted by plaintiff [5:93-cv-20614] (ab, COURT STAFF) (Entered: 12/23/1993)
01/14/1994	49	BRIEF FILED in opposition by defendants Peter Kwan, and Francis Chua in opposition to motion for relief from order and alternative motion to reconsider [5:93-cv-20614] (ab, COURT STAFF) (Entered: 01/19/1994)
01/14/1994		RECEIVED proposed order re motion for relief from order and alternative motion to reconsider submitted by defendants Peter Kwan, and Francis Chua [5:93-cv-20614] (ab, COURT STAFF) (Entered: 01/19/1994)

01/14/1994	50	MEMORANDUM by defendants Harry Allen, and Aetrium, Inc. in opposition to motion for relief from order [47-1] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 01/24/1994)
01/21/1994	51	REPLY brief by plaintiff re motion for relief from order [47-1], re motion for reconsideration [47-2] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 01/25/1994)
01/21/1994	58	MINUTES: (C/R not reported) Case Management Conference reset for 9:00 1/28/94 [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/08/1994)
01/28/1994	52	MOTION by plaintiff for leave to file second amended complaint with Notice set for 3/4/94 9 a.m. [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/02/1994)
01/28/1994	53	MEMORANDUM by plaintiff in support of motion for leave to file second amended complaint [52-1] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/02/1994)
01/28/1994	54	DECLARATION by Byron Fleck on behalf of plaintiff re motion for leave to file second amended complaint [52-1] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/02/1994)
01/28/1994		RECEIVED Second Amended Complaint submitted by plaintiff re: [52-1] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/02/1994)
01/28/1994	57	MINUTES: (C/R Machelche Rocha) that the motion for relief from order [47-1] and motion for reconsideration [47-2] is submitted [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/08/1994)
02/02/1994	55	PROOF OF SERVICE by plaintiff of reply brief in support of motion for relief from order, alternative motion to reconsider [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/03/1994)
02/04/1994	56	PROOF OF SERVICE by plaintiff of motion for leave to file 2nd amended complaint and related documents [5:93-cv-20614] (ab, COURT STAFF) (Entered: 02/04/1994)
02/18/1994	59	ORDER by Judge James Ware denying plaintiff's motions for leave to file second amended complaint [52-1], and motion for reconsideration [47-2]; Further Case Management Conference set for 10:30 3/18/94 (Date Entered: 3/1/94) (cc: all counsel) [5:93-cv-20614] (ab, COURT STAFF) (Entered: 03/01/1994)
03/14/1994	60	NOTICE OF APPEAL by plaintiff from Dist. Court decision [59-1], order [59-2] pd, no docketing statement, tno given [5:93-cv-20614] (ab, COURT STAFF) (Entered: 03/18/1994)
03/18/1994		Docket fee notification form and case information sheet to USCA [60-1] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 03/18/1994)
03/18/1994		Copy of notice of appeal and docket sheet to all counsel [5:93-cv-20614] (ab, COURT STAFF) (Entered: 03/18/1994)
03/21/1994	61	MINUTES: (C/R not reported) Case management conference off calendar ,

		appeal filed, action stayed [5:93-cv-20614] (ab, COURT STAFF) (Entered: 03/25/1994)
03/24/1994	63	TRANSCRIPT DESIGNATION and Ordering Form filed by plaintiff for dates 1/28/94 ; C/R: Joanne Bryce; appeal [60-1] [5:93-cv-20614] (ab, COURT STAFF) (Entered: 03/30/1994)
03/28/1994	62	ORDER by Judge James Ware terminating removing matter from program (case stayed) (Date Entered: 3/28/94) (cc: all counsel) [5:93-cv-20614] (ab, COURT STAFF) (Entered: 03/28/1994)
04/13/1994	64	REPORTER'S TRANSCRIPT; Date of proceedings: 01/28/94 (C/R: Machele Rocha) [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 04/14/1994)
04/14/1994		CERTIFICATE of Record mailed to USCA, counsel notified. [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 04/14/1994)
04/14/1994		NOTIFICATION by Circuit Court of Appellate Docket Number 94-15496 [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 04/14/1994)
05/27/1994	67	ATTORNEY SUBSTITUTION: terminating attorney Walter C. Kohn for pltf UTHE Technology Corp as counsel and substituting in attorney Harold J. McElhinny [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 06/08/1994)
05/31/1994	65	ORDER by Judge Thelton E. Henderson Case reassigned to Judge Robert P. Aguilar (Date Entered: 06/02/94) (cc: all counsel) [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 06/02/1994)
06/01/1994	66	ORDER by Judge Robert P. Aguilar setting status conference for 1:30 7/13/94 (cc: all counsel) [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 06/02/1994)
06/09/1994	75	CERTIFIED COPY of USCA Order: dismissing the appeal [60-1] [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 11/07/1994)
07/06/1994	68	STATUS CONFERENCE STATEMENT by dfts Harry Allen, Aetrium, Inc. [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 07/08/1994)
07/06/1994	69	PROOF OF SERVICE by Harry Allen, Aetrium, Inc. of document #68 [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 07/08/1994)
07/13/1994	70	MINUTES: (C/R not reported) Status conference set for 9:00 9/9/94 ; [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 07/26/1994)
07/22/1994	71	SCHEDULING ORDER by Judge Robert P. Aguilar : ; status conference set for 9:00 9/9/94 (cc: all counsel) [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 07/26/1994)
08/29/1994	72	STATUS CONFERENCE STATEMENT by Defendant Harry Allen, Defendant Aetrium, Inc. [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 09/09/1994)
08/30/1994	73	STATUS CONFERENCE STATEMENT by Plaintiff UTHE Technology Corp [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 09/09/1994)

09/01/1994	74	ORDER RE COURT PROCEDURE and SCHEDULE by Judge Robert P. Aguilar : counsels' case management statement to be filed by 4/28/95 ; initial case management conference will be held 11:00 5/5/95 . (cc: all counsel) (cv, COURT STAFF) (Entered: 09/16/1994)
04/14/1995	76	CLERK'S NOTICE Case Management Conference set for 11:00 5/26/95 ; [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 04/21/1995)
04/28/1995	77	STATUS CONFERENCE STATEMENT by Plaintiff UTHE Technology Corp [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 05/01/1995)
05/18/1995	78	STATUS CONFERENCE STATEMENT by dfts Harry Allen, Aetrium, Inc. [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 05/30/1995)
05/22/1995	79	ORDER by Judge Robert P. Aguilar Status conference set for 9:00 12/1/95 , The court orders that the case caption shall read Uthe Technology Corp. v. Harry Allen and Aetrium, Inc. (Date Entered: 05/30/95) (cc: all counsel) [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 05/30/1995)
07/07/1995	80	ORDER by Assignment Committee Case reassigned to Judge Marilyn H. Patel in the San Francisco Division. Case assigned the following new number C95-02377 MHP (Date Entered: 07/14/95) (cc: all counsel) [5:93-cv-20614] (dhm, COURT STAFF) (Entered: 07/14/1995)
09/20/1995	81	LETTER dated 9/15/95 from Harold J. McElhinny re arbitration [3:95-cv-02377] (gba, COURT STAFF) (Entered: 09/25/1995)
03/28/1996	82	LETTER dated 3/27/96 from Harold J. McElhinny re Singapore Arbitration [3:95-cv-02377] (gba, COURT STAFF) (Entered: 03/29/1996)
04/05/1996	83	LETTER dated 4/4/96 from Harold J. McElhinny confirming the case management conference for 10/11/96 at 9:30 [3:95-cv-02377] (gba, COURT STAFF) (Entered: 04/08/1996)
10/07/1996	84	STATUS CONFERENCE STATEMENT by defendant Harry Allen, defendant Aetrium, Inc. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/08/1996)
10/11/1996	85	MINUTES: (C/R not reported) CASE MANAGEMENT CONFERENCE HELD. Parties are to work on a preservation order. Matter was continued to 12/6/96 at 9:30 a.m. for further case management conference. (11/29/96 - Jt CMC Statement) [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/18/1996)
10/31/1996	86	ORDER by Judge Marilyn H. Patel withdrawing attorney Harold J. McElhinny for UTHE Technology Corp, attorney Walter C. Kohn for UTHE Technology Corp and substituting attorney Robert Y. Chan (cc: all counsel) [3:95-cv-02377] (gba, COURT STAFF) (Entered: 11/08/1996)
11/27/1996	87	STATUS CONFERENCE STATEMENT by Plaintiff [3:95-cv-02377] (gba, COURT STAFF) (Entered: 12/06/1996)
11/27/1996	88	STATUS CONFERENCE STATEMENT by defendant Harry Allen, defendant Aetrium, Inc. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 12/06/1996)

		12/06/1996)
12/03/1996	89	SUPPLEMENT by Plaintiff re statement status [87-1] [3:95-cv-02377] (gba, COURT STAFF) (Entered: 12/06/1996)
12/06/1996	90	LETTER dated 12/4/96 from Robert Y. Chan confirming that the status conference for 12/6/96 has been continued to 1/10/97 at 9:30 a.m. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 12/09/1996)
01/10/1997	91	MINUTES: (C/R not reported) Further case management conference - held [3:95-cv-02377] (gba, COURT STAFF) (Entered: 01/23/1997)
03/07/1997	92	OBJECTIONS by defendant Harry Allen, defendant Aetrium, Inc. to plaintiff's request for discovery during pendency of stay [3:95-cv-02377] (gba, COURT STAFF) (Entered: 03/10/1997)
03/21/1997	93	REPLY by Plaintiff re defendants' objection [92-1] [3:95-cv-02377] (gba, COURT STAFF) (Entered: 03/24/1997)
03/27/1997	94	NOTICE by Plaintiff of change of address and firm name [3:95-cv-02377] (gba, COURT STAFF) (Entered: 03/27/1997)
04/10/1997	95	LETTER dated 4/8/97 from Karen L. Kennard confirming that the hearing on defendants' objections has been scheduled for 5/30/97 at 10:30 a.m. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 04/14/1997)
05/19/1997	96	LETTER dated 5/15/97 from Robert Y. Chan addressed to Ms. Kennard confirming that defendants' objections has taken the hearing off calendar. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 05/21/1997)
09/26/1997	97	LETTER dated 9/24/97 from Robert Y. Chan re discovery dispute [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/09/1997)
09/30/1997	98	LETTER dated 9/26/97 from Karen L. Kennard re discovery dispute [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/09/1997)
10/14/1997	99	LETTER dated 10/9/97 from Karen L. Kennard confirming the status conference for 10/21/97 at 11:00 a.m. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/15/1997)
10/14/1997		Docket Modification (Administrative) to letter [99-1] Status conference set for 11:00 10/21/97 ; [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/15/1997)
10/15/1997	100	STATUS CONFERENCE STATEMENT by defendant Harry Allen, defendant Aetrium, Inc. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/15/1997)
10/15/1997	101	STATUS CONFERENCE STATEMENT by Plaintiff [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/20/1997)
10/21/1997	102	MINUTES: (C/R Jim Yeomans) (Hearing Date: 10/21/97) Phone conference - discovery dispute - held ; The stay was addressed. The court was informed about the current status of the arbitration in Singapore. The court will be issued an administrative closing order. Ms. Kennard will be submitting an

		order denying the discovery request and the stay. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/23/1997)
10/22/1997		RECEIVED proposed order denying request for discovery and continuing stay of action submitted by defendant Harry Allen, defendant Aetrium, Inc. [3:95-cv-02377] (gba, COURT STAFF) (Entered: 10/23/1997)
10/27/1997	103	ORDER by Judge Marilyn H. Patel that plaintiff's request for discovery from defendants Aetrium and Allen is DENIED. This action will remain stayed pursuant to the 12/8/93 order entered by the Hon. James Ware, pending resolution of the arbitration in Singapore of the underlying dispute between plaintiff and former defendants Peter Kwan and Francis Chua (cc: all counsel) [3:95-cv-02377] (gba, COURT STAFF) (Entered: 11/04/1997)
10/27/1997	104	ORDER by Judge Marilyn H. Patel dismissing case for statistical purposes ; appeal filing ddl 12/4/97 (cc: all counsel) [3:95-cv-02377] (gba, COURT STAFF) (Entered: 11/04/1997)

PACER Service Center			
Transaction Receipt			
05/18/2012 11:05:08			
PACER Login:	wh0019	Client Code:	
Description:	Docket Report	Search Criteria:	3:95-cv-02377-MHP
Billable Pages:	7	Cost:	0.70

1 **PROOF OF SERVICE**

2
3 I am a resident of the State of California, over the age of eighteen years,
4 and not a party to the within action. My business address is 9665 Wilshire Blvd., Suite
5 200, Beverly Hills, California 90212.

6 On May 18, 2012, I served the within document(s):

7 **MOTION TO REOPEN ADMINISTRATIVELY CLOSED CASE AND**
8 **LIFT STAY**
9

10 ☒ by placing a true copy of the document(s) listed above for collection and
11 mailing following the firm's ordinary business practice in a sealed
12 envelope with postage thereon fully prepaid for deposit in the United
13 States mail at Los Angeles, California addressed as set forth below.

14 Bingham
15 Three Embarcadero Center
16 San Francisco, CA 94111-4067
(415) 393-2000

Walsh Donovan Lindh & Keech LLP
595 Market Street, Suite 2000
San Francisco, CA 94105
(415) 536-7800

17 Karen Leanne Kennard, Esq.
18 Deloitte LLP
19 555 Mission Street, 14th Floor
San Francisco, CA 94105
(415) 783-4000

Ann S. Crownover, Esq.
3245 Clay Street, Apartment 9
San Francisco, CA 94115

20
21 *Attorneys for Defendants Harry Allen*
22 *and Aetrium, Inc.*

Charles S. Donovan, Esq.
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center
Seventeenth Floor
San Francisco, CA 94111
(415) 434-9100

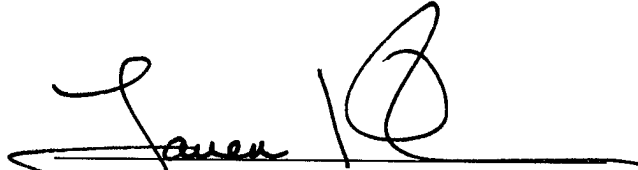
24 *Attorney for Defendants Peter Kwan and*
25 *Francis Chua*
26
27
28

1 I am readily familiar with the firm's practice of collection and processing
2 correspondence for mailing and for shipping via overnight delivery service. Under
3 that practice it would be deposited with the U.S. Postal Service or if an overnight
4 delivery service shipment, deposited in an overnight delivery service pick-up box or
5 office on the same day with postage or fees thereon fully prepaid in the ordinary
6 course of business.

7 I declare under penalty of perjury under the laws of the State of
8 California that the above is true and correct.

9 Executed on May 18, 2012, at Los Angeles, California.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Lauren J. Kaplan